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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 922

[Doc. No. AMS-FV-12-0027; FV12-922-1 IR]

Apricots Grown in Designated Counties in Washington;

Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule decreases the assessment rate established for the Washington Apricot Marketing Committee (Committee) for the 2012-13 and subsequent fiscal periods from \$1.50 to \$0.50 per ton of Washington apricots handled. The Committee locally administers the marketing order which regulates the handling of apricots grown in designated counties in Washington. Assessments upon apricot handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins April 1 and ends March 31. The assessment rate will remain in effect indefinitely unless modified, suspended or terminated.

DATES: Effective [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments received by [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE

FEDERAL REGISTER], will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet: www.regulations.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: www.regulations.gov. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Manuel Michel, Marketing Specialist, or Gary Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 805 SW Broadway, Suite 930, Portland, OR 97205; Telephone: (503)

326-2724; Fax: (503) 326-7440; or E-mail:

Manuel.Michel@ams.usda.gov or GaryD.Olson@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Laurel May, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491; Fax: (202) 720-8938; or E-mail: Laurel.May@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 922 (7 CFR 922), as amended, regulating the handling of apricots grown in designated counties in Washington, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, apricot handlers in designated counties in Washington are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be

applicable to all assessable Washington apricots beginning April 1, 2012, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule decreases the assessment rate established for the Committee for the 2012-13 and subsequent fiscal periods from \$1.50 to \$0.50 per ton of Washington apricots handled under the order.

The Washington apricot marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of apricots in designated counties in Washington. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2010-11 and subsequent fiscal periods, the Committee recommended, and the USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on May 24, 2012, and unanimously recommended expenditures of \$4,695 for the 2012-13 fiscal period. In comparison, the previous fiscal period's budgeted expenditures were \$8,145. The Committee also unanimously recommended an assessment rate of \$0.50 per ton

of apricots. The recommended assessment rate of \$0.50 is \$1.00 lower than the rate currently in effect.

The Committee's decision to lower expenditures and its recommendation to decrease the assessment rate were a direct result of discussions regarding the future of the marketing order. Committee members discussed reasons for and against regulatory suspension, order suspension, and termination of the order. After much consideration, the Committee unanimously recommended a temporary suspension of the order's handling regulations, lower expenditures, and a decrease in the assessment rate. The Committee believes that decreasing the assessment rate will allow the Committee to fund its financial obligations and reduce its current monetary reserve of \$3,968.

The major expenditures recommended by the Committee for the 2012-13 fiscal period include \$2,400 for the management fee, \$1,300 for Committee travel, \$750 for the annual audit review, and \$245 for insurance, bonds, and miscellaneous expenses. In comparison, major expenditures for the 2011-12 fiscal period included \$4,800 for the management service fee, \$1,300 for travel, \$100 for compliance, and \$1,945 for audits, insurance and bonds, equipment maintenance and miscellaneous expenses.

Committee members estimated the 2012 fresh apricot production to be approximately 6,600 tons, which exceeds the 2011 production of 2,758 tons by 3,840 tons. The Committee's recommended assessment rate was then derived by dividing the 2012-13 anticipated expenses by the expected shipments of Washington apricots, while also taking into account the Committee's monetary reserve. The recommended assessment rate of \$0.50 per ton of apricots multiplied by the 6,600 tons of estimated 2012 Washington apricot shipments would generate \$3,300 in handler assessments. The projected revenue from handler assessments, along with funds from the Committee's monetary reserve of \$3,968, will be adequate to cover the 2012-13 budgeted expenses of \$4,695. The Committee's monetary reserve is expected to be approximately \$2,573 at the end of the 2012-13 fiscal period.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget

of expenses and consider recommendations for modification of the assessment rate. The dates and times of the Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2012-13 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-602), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are

brought about through group action of essentially small entities acting on their own behalf.

There are approximately 94 producers of apricots in the production area and approximately 20 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$750,000, and small agricultural service firms are defined as those having annual receipts of less than \$7,000,000.

The National Agricultural Statistics Service reported that in 2011 the Washington apricot total utilization (including both fresh and processed markets) of 3,900 tons sold for an average of \$1,830 per ton. Consequently, the total farm-gate value in 2011 was approximately \$7,132,000. Based on the number of producers in the production area (94), the 2011 average revenue from the sale of apricots is estimated at approximately \$75,925 per producer. In addition, based on information from the USDA's Market News Service, 2011 f.o.b. prices for WA No. 1 apricots ranged from \$20.00 to \$26.00 per 24-pound loose-pack container, and from \$22.00 to \$30.00 for 2-layer tray-pack containers. Using average price and shipment information provided by

the Committee, it is determined that each of the Washington apricot handlers currently ship less than \$7,000,000 worth of apricots on an annual basis. In view of the foregoing, it can be concluded that the majority of producers and handlers of Washington apricots may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2012-13 and subsequent fiscal periods from \$1.50 to \$0.50 per ton of apricots handled under the order's authority. The Committee also unanimously recommended 2012-13 expenditures of \$4,695. With a 2012-13 Washington apricot crop estimate of 6,600 fresh market tons, the Committee anticipates assessment income of approximately \$3,300. Income derived from handler assessments, along with funds from the Committee's monetary reserve, will be adequate to cover budgeted expenses for the 2012-13 fiscal period. At this assessment rate and expense level, the Committee's monetary reserve will approximate \$2,573 by March 30, 2013, which is within the maximum permitted by the order of approximately one fiscal period's operational expenses (\$ 922.42).

The major expenditures recommended by the Committee for the 2012-13 fiscal period include \$2,400 for the

management fee; \$1,300 for Committee travel; \$750 for the annual audit review; and \$245 for insurance, bonds, and miscellaneous expenses. In comparison, major expenditures for the 2011-12 fiscal period included \$4,800 for the management service fee; \$1,300 for travel; \$100 for compliance; and \$1,945 for audits, insurance and bonds, equipment maintenance, and miscellaneous expenses. Funds in the Committee's monetary reserve were \$3,968 on March 31, 2012, and were within the order's limit of approximately one fiscal period's operational expenses.

The Committee discussed alternatives to this rule, including alternative expenditure levels. Although lower assessment rates were considered, none were selected because they would not generate sufficient income to administer the order. Committee members also discussed reasons for and against regulatory suspension, order suspension, and termination of the order. The result of these discussions was the Committee's recommendation to decrease the assessment rate. The Committee also recommended suspension of the handling regulations, and that recommendation is being reviewed separately by USDA.

A review of historical crop and price information, as well as preliminary information pertaining to the 2012-13

fiscal period, indicates that the producer price could average approximately \$1,000 per ton for fresh Washington apricots. Therefore, the estimated assessment revenue for the 2012-13 fiscal period as a percentage of total producer revenue is 0.05 percent for Washington apricots.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the Washington apricot industry, and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 24, 2012, meeting was a public meeting, and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this interim rule, including the regulatory and informational impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by

the Office of Management and Budget (OMB) and assigned OMB No. 0581-0189. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This action imposes no additional reporting or recordkeeping requirements on either small or large Washington apricot handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at:

www.ams.usda.gov/MarketingOrdersSmallBusinessGuide. Any questions about the compliance guide should be sent to

Laurel May at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2012-13 fiscal period began on April 1, 2012, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable apricots handled during such fiscal period; (2) the action decreases the assessment rate for assessable apricots beginning with the 2012-13 fiscal period; (3) handlers are aware of this action, which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past

years; and (4) this interim rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 922 is amended as follows:

PART 922 - APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

1. The authority citation for 7 CFR part 922 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Section 922.235 is revised to read as follows:

§ 922.235 Assessment rate.

On or after April 1, 2012, an assessment rate of \$0.50 per ton is established for the Washington Apricot Marketing Committee.

Dated: November 30, 2012

David R. Shipman
Administrator
Agricultural Marketing Service

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